IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 26943 of 2004(G)

(AGAINST THE ORDER DATED 24/12/2003 OF THE LOK AYUKTA IN COMPLAINT NO.30/2003)

PETITIONERS:

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1. **THE DIRECTOR OF PUBLIC INSTRUCTION AND COMMISSIONER FOR GOVERNMENT EXAMINATION, THIRUVANANTHAPURAM.**

2. **THE STATE OF KERALA,REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

BY STATE ATTORNEY
BY GOVERNMENT PLEADER SMT. K.R. DEEPA

RESPONDENTS:

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1. **P.MOHANAN, T.C.25/126, GIRIJA BHAVAN, GANDHARIAMMANCOIL ROAD, THIRUVANANTHAPURAM -1.**

2. **THE KERALA LOK AYUKTHA, REP. BY ITS REGISTRAR, THIRUVANANTHAPURAM.**

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.26943/2004 G

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE COMPLAINT NO.30/2003 FILED BY THE RESPONDENT BEFORE THE KERALA LOK AYUKTA.**

EXT.P2: **COPY OF THE LETTER DTD. 01/02/2003 OF THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT.**

EXT.P3: **COPY OF THE ORDER DTD. 18/09/2003 OF THE RESPONDENT LOK AYUKTA IN COMPLAINT NO.30/2003.**

EXT.P4: **COPY OF G.O.(MS) NO.119/2003/G.EDN. DTD. 16/05/2003.**

EXT.P5: **COPY OF G.O.(MS) NO.2971/03/G.EDN. DTD. 27/10/2003.**

EXT.P6: **COPY OF THE LETTER DTD. 21/12/2003 OF THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT.**

EXT.P7: **COPY OF THE ORDER DTD. 24/12/2003 OF THE 2ND RESPONDENT LOK AYUKTA IN I.A.NO.289/2003 IN COMPLAINT NO.30/2003.**

/TRUE COPY/

P.A.TO JUDGE

KSS

KURIAN JOSEPH J.

W.P.(C) No.26943 of 2004

Dated 20th July, 2007.

J U D G M E N T

Challenge is on Ext.P7 order passed by the second respondent, whereby a positive direction was issued to refund revaluation fee to the first respondent. The first respondent sought for refund of the revaluation fee since he obtained marks above 10% on revaluation. One of the apprehensions of the writ petitioners is that large number of applicants would raise such an issue. The main contention of the learned Government Pleader is that the Government order enabling refund does not have retrospective operation. I am afraid, the contention cannot be appreciated. As rightly held by the second respondent, there cannot be discrimination in the case of the applicants who secured marks above 10% on revaluation before 11.2.2000 and those candidates who submitted applications after 11.2.2000. Therefore, it is not necessary for this Court to exercise its discretionary jurisdiction under Article 226 of the Constitution of India, to go into the various aspects of the jurisdiction of the second respondent, since the first respondent is otherwise

entitled to succeed. The writ petition is hence dismissed.

KURIAN JOSEPH, JUDGE.

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KURIAN JOSEPH, J.

O.P. NO. OF 200

J U D G M E N T

Dated 20th July, 2007.